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VIA FEDERAL EXPRESS

January 4, 1995

Mr. William F. Caton  
Acting Secretary  
Office of the Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D. C. 20554

RECEIVED

JAN 05 1995

FCC MAIL ROOM

Re: Jefferson City, Cumberland Gap,  
Elizabethton, TN & Jonesville, VA  
COUNTER PROPOSAL REPLY COMMENTS  
In response to NOTICE OF PROPOSED  
RULE MAKING MM Docket No. 94-116  
RM-8507 & RM-8567

Dear Mr. Caton:

Enclosed please find an original and four (4) copies of  
Counterproposal Reply Comments submitted in the above-referenced  
proceeding filed by Eaton P. Govan, III and Berton B. Cagle, Jr.

Should you or your staff have any questions concerning this  
matter, please do not hesitate to contact us for clarification.

Respectfully,

Eaton P. Govan, III  
General Manager

With enclosures

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S U M M A R Y

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(A) Govan and Cagle submit that the Holston Valley Broadcasting Corporation Counterproposal is a carefully crafted ruse designed to thwart an upgrade at Station WAEZ(FM) and thus constitutes a strike petition.

(B) The Govan and Cagle proposal for Channel 256A at Cumberland Gap merits preference from a public interest standpoint for the following reasons:

- a. The proposed Channel 256A at Cumberland Gap would provide service to 66,527 persons while the Jonesville counterproposal would only provide serve 43,406 persons.
- b. Seven incorporated cities would be encompassed by the 60 dBu contour of the proposed Cumberland Gap facility. Only two incorporated towns would receive service from the proposed Channel 256A at Jonesville.
- c. The reallocation of Channel 256A at Cumberland Gap as proposed would allow spacing to accommodate an upgrade for Station WAEZ(FM) at Elizabethton, Tennessee.
- d. The proposed Cumberland Gap facility would provide broadcast services to over 1.3 million tourists who visit the Cumberland Gap National Historical Park each year.
- e. The Cumberland Gap area is a vital and growing region with a diverse economic base. The Jonesville area has very limited retail and commercial activity with little prospect for improvement.

## I N D E X

1. Notice of Proposed Rulemaking Information
2. Counterproposal Information
3. HVBC Counterproposal Is A Strike Petition
4. FM Allotment Preferences - Cumberland Gap Favored
5. Cumberland Gap Serves More Population
6. Cumberland Gap Area More Economically Viable
7. More Schools Would Be Served At Cumberland Gap
8. 1.3 Million Tourist Per Year At Cumberland Gap
9. Huge Growth Expected At Cumberland Gap

SUMMARY

CERTIFICATIONS

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

RECEIVED

JAN 05 1995

FCC MAIL ROOM

In the Matter of: )  
 )  
Amendment of Section 73.202(b) )  
Table of Allotments )  
FM Broadcast Stations )  
 )  
Jefferson City, Tennessee )  
WEZG(FM) Channel 257A )  
Cumberland Gap, Tennessee )  
WEZG(FM) Channel 256A )  
Elizabethton, Tennessee )  
WAEZ(FM) Channel 257C3 )  
Elizabethton, Tennessee )  
WAEZ(FM) Channel 257C2 )  
Jonesville, Virginia )  
Channel 256A )

MM Docket No: 94-116

RM-8507

RM-8567

In response to FCC Public Notice  
REPORT NO. 2048

To: Chief, Allocations Branch

COUNTERPROPOSAL REPLY COMMENTS

Comes now, Eaton P. Govan, III, and Berton B. Cagle, Jr., licensee of both WEZG(FM), formerly WUSK-FM, Jefferson City, Tennessee (Channel 257A), and WAEZ(FM), formerly WUSJ-FM, Elizabethton, Tennessee (Channel 257C3),<sup>1</sup> also being the original Petitioners, and herewith submit their Counterproposal Reply Comments in the above-referenced proceeding, responding to the Counterproposal advanced by Holston Valley Broadcasting Corporation, licensee of

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<sup>1</sup> On September 12, 1994, the call sign of WUSK-FM, Jefferson City, was changed to WEZG(FM), Jefferson City, and the call sign of WUSJ-FM, Elizabethton, was changed to WAEZ(FM), Elizabethton.

Station WTFM(FM) at Kingsport, Tennessee, as follows:

1. On October 5, 1994, the Commission released a Notice of Proposed Rule Making in the above-referenced proceeding, which fully adopted Govan and Cagle's Petition as a rule making proposal to substitute Channel 256A for Channel 257A at Jefferson City, to reallocate Channel 256A from Jefferson City to Cumberland Gap, Tennessee, and to modify the Petitioners' authorization to specify Cumberland Gap as Station WEZG's community of license. Additionally, the Commission proposed the substitution of Channel 257C2 for Channel 257C3 at Elizabethton, Tennessee, and modification of petitioners' license for Station WAEZ(FM) to specify operation on Channel 257C2.

2. On November 25, 1994, Holston Valley Broadcasting Corporation ("HVBC"), by its attorney, advanced a counterproposal in which it was suggested that, instead of allocating Channel 256A at Cumberland Gap and allowing Station WAEZ(FM) at Elizabethton to upgrade from Channel 257C3 to Channel 257C2, the Commission should allocate Channel 256A at Jonesville, Virginia. This Counterproposal is mutually exclusive with above-referenced proposal and Govan and Cagle oppose it vigorously.

3. In their Reply Comments Govan and Cagle stated their strong belief that Holston Valley Broadcasting Corporation has no genuine or legitimate interest in operating a Class A FM Broadcast Station at Jonesville, Virginia and that the HVBC Counterproposal was filed solely for the purpose of impeding, obstructing or delaying the grant of the Petitioners proposed upgrade of Station WAEZ(FM), Elizabethton, from Class C3 to Class C2. Therefore Govan and Cagle

requested that the Commission reject the HVBC Counterproposal forthwith as a "strike petition". Govan and Cagle continue to believe that the HVBC Counterproposal clearly embodies all four of the factors articulated by the Commission as evidence of motive to file a strike petition.<sup>2</sup> Where a competitor comes forward, as Govan and Cagle believe HVBC has done in the instant proceeding, solely to block an upgrade of another station is a gross abuse of the Commission's allotment process. Hence, the Commission should reject the Holston Valley Broadcasting Corporation's Counterproposal forthwith as a "strike petition". In support of such action the following was shown in the Govan and Cagle Reply Comments:

(A) Channel 256A can be allotted to Jonesville, Virginia, in compliance with the Commission's minimum distance separation requirements only upon the relocation of the transmitter site of Station WTFM(FM) at Kingsport, Tennessee. Holston Valley Broadcasting Corporation, the licensee of WTFM(FM), filed an application for a construction permit seeking to move the WTFM(FM) transmitter site on January 21, 1993. In that it was HVBC's application for a transmitter move that created the spacing for Channel 256A at Jonesville, Virginia, HVBC should have known as early January, 1993, that such spacing existed for Channel 256A at Jonesville, Virginia.

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<sup>2</sup> Grengo, Inc, 28 FCC 2d 166 (1971) and Millar v. FCC, 707 f.2d 1530, 1535 (D.C. Cir. 1983).

(B) Holston Valley Broadcasting Corporation and its President George DeVault have made numerous attempts to "protect" Station WTFM(FM) from competition in the adult contemporary music format by hampering or removing potential competitors.

- a. DeVault offered to provide Govan and Cagle antenna space on a tower owned by HVBC at a "very good rate" if Govan would stipulate that WAEZ(FM), then WUSJ-FM, would not change to the adult contemporary format in direct competition with WTFM(FM).
- b. DeVault offered to "contribute" up to \$50,000.00 toward the purchase price of WKOS(FM) if Govan and Cagle would buy the station and program country music on the station. He feared Bloomington Broadcasting Company would gain control of the station and program a music format more directly in competition with WTFM(FM).
- c. George DeVault and David Widener, General Manager of WTFM(FM), came to see Govan and Cagle in August, 1994, and attempted to induce Govan and Cagle to change the format of WAEZ(FM), then WUSJ-FM, to "All Rock 'n' Roll Oldies" (the ARROW format) even offering to supply research and data from their programming consultant and personnel from Holston Valley Broadcasting Corporation to assist with the format change. DeVault and Widener believed Govan and Cagle were planning to change the format of WAEZ to soft adult contemporary music.

Because many advertisers, particularly the larger regional and national accounts, place advertising schedules only with the top

three rated stations (Arbitron) in the Tri-Cities market, Station WTFM would stand to lose substantial advertising revenues if their audience ranking fell below one of the top three positions.

(C) Holston Valley Broadcasting Corporation expressed no interest whatsoever in operating an FM broadcast station at Jonesville, Virginia prior to November 25, 1994, when their Counterproposal was advanced. It is ironic that Holston Valley Broadcasting Corporation only showed interest in their Jonesville proposal after Govan and Cagle changed the format of WAEZ(FM) from country music to soft adult contemporary music in direct competition with WTFM(FM) in September, 1994. Govan and Cagle submit that HVBC suddenly became interested in the allotment at Jonesville, Virginia, realizing that a counterproposal to the upgrade requested by Govan and Cagle would impede their efforts to improve the signal of Station WAEZ(FM).

(D) HVBC apparently has made no attempt to determine if other channels are available for allotment in the Jonesville, Virginia, area. Their Counterproposal made absolutely no mention of any such study having been done. Govan and Cagle submit that the **only** channel in which Holston Valley Broadcasting Corporation has any interest is the **one which could block or impede an upgrade for WAEZ(FM)**.

(E) Govan and Cagle believe that there is ample evidence of HVBC's motive to file a strike application:

- a. The timing of HVBC "sudden" interest in Channel 256A is certainly suspect.
- b. There would be substantial economic and competitive



benefits to WTFM(FM) should an upgrade at WAEZ(FM) be blocked or delayed.

- c. HVBC had shown no interest in an FM Station at Jonesville, Virginia, prior to their Counterproposal, and even that Counterproposal did not show a desire by HVBC to construct and operate a station at Jonesville. There was only the minimum obligatory statement that they would submit an application if the allocation were made by the Commission. Hence, their "good faith" must be questioned.
- d. There was no showing whatsoever of any attempt by HVBC to determine if other frequencies were available at Jonesville, Virginia.

Therefore, the Petitioners believe that HVBC's Counterproposal is nothing more than a "sham" to prevent WAEZ(FM) from improving its competitive position *vis a vis* WTFM(FM). Thus, the Commission should reject the Holston Valley Broadcasting Corporation's Counterproposal forthwith as a "strike petition".

4. The Commission has set forth its allotment criteria in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982), which are:

- (1) First fulltime aural service;
- (2) Second fulltime aural service;
- (3) First local service; and
- (4) Other public interest matters.

The Petitioners also note that the Commission in *Apalachicola and*

Carrabelle, Florida, 6 FCC Rcd 7147 (1991), clarified that the "first allotment priority is provision of a first full-time aural service. This refers to *reception* service, not to transmission service. Allotment priority three, first local service, refers to provision of a community's first transmission service."

Neither the proposed re-allotment of Channel 256A to Cumberland Gap nor the HVBC Counterproposal for Channel 256A at Jonesville would provide the respective communities with a first or second full-time aural service as each community already has numerous reception services available (See Exhibit 1, *Reception Services Available at Jonesville, Virginia*). Therefore, each of the proposals should properly be given credit under priority three, first local service. However, the Cumberland Gap proposal should additionally be credited under priority four due to the public interest benefits flowing from the proposed upgrade of Station WAEZ(FM) at Elizabethton, Tennessee, from Class C3 to Class C2. This upgrade would be denied by the HVBC Counterproposal.

5. In making a comparison of the population within the service contours of the proposed Channel 256A at Cumberland Gap, Tennessee, and the HVBC Counterproposal at Jonesville, Virginia, the Cumberland Gap proposal is a clear winner. While the populations of both Cumberland Gap, Tennessee, and Jonesville, Virginia, are both small (less than 1,000 persons), the population within the proposed city-grade (70 dBu) contour of Channel 256A at Cumberland Gap calculated from 1990 United States Census Data counting to block

level using the linear interpolation method is 32,934 persons. The population with the 60 dBu contour of the proposed Channel 256A at Cumberland Gap is 66,527 persons.

By contrast, the population encompassed by the 70 dBu contour of Channel 256A at Jonesville, Virginia, as proposed by HVBC would be only 13,289 persons. Further, HVBC, in their Counterproposal, erroneously stated that the population within the 60 dBu contour of the proposed Jonesville facility would be 53,238; however, they apparently did not take into account the terrain surrounding the proposed site. By computing the 60 dBu contour according to the FCC methodology and calculating the population encompassed thereby from 1990 United States Census Data counting to block level using the linear interpolation method, Govan and Cagle found that the population that would be within the 60 dbu contour of Channel 256A at Jonesville is just 43,406 persons. A simple comparison shows that this is 9,832 fewer persons than was "estimated" by HVBC and 23,121 fewer persons than would receive new service from the proposed reallocation of Channel 256A at Cumberland Gap. Additionally, the proposed upgrade of Station WAEZ(FM) at Elizabethton from Class C3 to Class C2 would provide a new service to 93,766 persons. The combined reallocation of WEZG(FM) to Cumberland Gap and the upgrade of WAEZ(FM) would provide a new service to a total of 160,293 persons.

6. An FM Broadcast Station's signal coverage does not end at the town limits of the community of license, so the relative merits of a proposed facility should properly be judged by its total (60 dBu) service area. Here, again, when the Govan and Cagle proposal is

compared with the HVBC counterproposal in this light, the Cumberland Gap proposal is an easy winner. There is only one incorporated town (Jonesville, Virginia, population 927) within the "city-grade" (70 dBu) contour of the proposed Jonesville facility. Whereas, the proposed 70 dBu contour of Channel 256A at Cumberland Gap would fully encompass four incorporated cities:

Cumberland Gap, Tennessee, population 210

Harrogate, Tennessee, population 2000

Tazewell, Tennessee, population 2150

New Tazewell, Tennessee, population 1864

Additionally, the proposed 70 dBu signal of Channel 256A at Cumberland Gap would reach approximately half of Middlesboro, Kentucky, population 11,328. Plus, the 60 dBu contour of the proposed Channel 256A at Cumberland Gap would entirely encircle Middlesboro, Kentucky; Pineville, Kentucky, population 2198; and Rutledge, Tennessee, population 903. In studying the proposed Jonesville, Virginia, facility, Govan and Cagle could find only two incorporated towns within the 60 dBu contour:

Jonesville, Virginia, population 927

Pennington Gap, Virginia, population 1922

Indeed, the proposed Cumberland Gap facility will provide a "city-grade" signal to almost four times as many persons as would Channel 256A as proposed at Jonesville. Further, 23,121 more persons would receive new service from the proposed facility at Cumberland

Gap than would receive new service from the proposed Channel 256A at Jonesville.

7. There are a number of elementary and secondary schools within the service contour of the proposed Channel 256A at Cumberland Gap. Lincoln Memorial University, Southeast Community College, and several vocational-technical schools are within the 60 dBu service area of the proposed Cumberland Gap facility. However, there are no colleges or universities, fewer vocational-technical schools, and considerably fewer elementary and secondary schools within the 60 dBu contour of the proposed Channel 256A at Jonesville.

8. It should also be noted that the tourist population of the Cumberland Gap area and the Cumberland Gap National Historic Park, the second largest park of its kind in the nation, was 1.3 million persons in 1994. The number of tourists who visit the area has increased each year with 1994 recording an increase of more than 100,000 persons. The proposed Channel 256A at Cumberland Gap would be of great service to these millions of persons while they are in the area. Such a local station could provide potentially lifesaving information to these persons in the event of threatening weather, road or travel irregularities, or other imposing dangers. The Jonesville, Virginia, area does not enjoy a large influx of tourists each year.

9. Because of the National Park and the near completion of the \$258 million Cumberland Gap Tunnel Project, economic growth is expected to be strong in the Cumberland Gap area over the next

several years. Quoting a publication from the United States Department of the Interior relating to the Cumberland Gap Tunnel Project:

"The Federal Highway Administration is constructing a tunnel through Cumberland Mountain. Associated with it are approach roads and bridges both in Kentucky and Tennessee. It will allow a dangerous section of U.S. 25-E to be widened to four lanes. To be completed in 1995, the 4,100 foot tunnel will connect Kentucky and Tennessee by means of a safe roadway. Traffic is expected to increase greatly as a result.

The present traffic count along U.S. Highway 25-E is 18,000 vehicles per day, and Federal Highway Administration officials estimate that the daily traffic count will double to 36,000 within the next ten years.

Unfortunately, the area surrounding Jonesville, Virginia, has little prospect of significant economic improvement in the foreseeable future due in part to a decline in coal mining activity in Lee County. The population of Lee County has declined over the last several years. The United States Census figures indicate that the population of Lee County dropped from 25,955 persons in 1980 to 24,496 persons in 1990. That is a decrease in population of 1,449 persons in just ten years.

Indeed, there is great question about the economic viability of a broadcast station at Jonesville, Virginia. Jonesville is a very small town with little retail activity, and, as has been shown, only Pennington Gap approximately 7 miles to the north would provide additional local revenue potential for such a facility. Pennington

Gap itself is a small town with little economic activity and is already served by both WSWV(AM) and WSWV(FM) and a local newspaper. The addition of another broadcast facility to the area could create such an economic hardship that the present level of service provided by the Pennington Gap stations could be severely curtailed. It would be extremely adverse to the interest of the citizens of Jonesville to allot a new broadcast service to the town at the request of HVBC whose only interest is to impede the upgrade of WAEZ(FM) when that new allotment would pose the threat of disrupting the present broadcast service to Jonesville.

In summary, Govan and Cagle submit that the Holston Valley Broadcasting Corporation Counterproposal is a carefully crafted ruse designed to thwart an upgrade at Station WAEZ(FM) and thus constitutes a strike petition. The Commission should examine the circumstances surrounding the filing of this Counterproposal to determine HVBC's "true" intent. Further, should the Commission wish to consider the Cumberland Gap proposal *vis a vis* the Jonesville counterproposal, the Govan and Cagle proposal for Channel 256A at Cumberland Gap merits preference from a public interest standpoint for the following reasons:

- A. The proposed Channel 256A at Cumberland Gap would provide service to 66,527 persons while the Jonesville counterproposal would only provide service 43,406 persons.
- B. Seven incorporated cities would be encompassed by the 60 dBu contour of the proposed Cumberland Gap facility.

Only two incorporated towns would receive service from the proposed Channel 256A at Jonesville.

- C. The reallocation of Channel 256A at Cumberland Gap as proposed would allow spacing to accommodate an upgrade for Station WAEZ(FM) at Elizabethton, Tennessee. This upgrade would provide a new broadcast service to 93,766 persons. The Jonesville counterproposal would deny this upgrade for WAEZ(FM).
- D. The proposed Cumberland Gap facility would provide broadcast services to over 1.3 million tourists who visit the Cumberland Gap National Historical Park each year. Jonesville does not enjoy a large tourist population.
- E. The Cumberland Gap area is a vital and growing region with a diverse economic base. Growth potential is very good. Auto traffic along U.S. Highway 25-E at Cumberland Gap is expected to double in the next 10 years. Whereas, the Jonesville area has very limited retail and commercial activity with little prospect for improvement. There is substantial doubt that a broadcast station at Jonesville could be economically viable.

The combined reallocation of WEZG(FM) to Cumberland Gap and the upgrade of WAEZ(FM) would provide a new broadcast service to a total



of 160,293 permanent residents and over 1.3 million annual tourists. The HVBC Counterproposal would provide new service to only 43,406 persons.

WHEREFORE, in light of the foregoing, Eaton P. Govan, III, and Berton B. Cagle, Jr., respectfully request that the Commission grant the original rule making proposal of Govan and Cagle and reject forthwith the Holston Valley Broadcasting Corporation Counterproposal.

Respectfully submitted,

EATON P. GOVAN, III & BERTON B. CAGLE, JR.

By: Eaton P. Govan III  
Eaton P. Govan, III

January 4, 1995

Eaton P. Govan, III &  
Berton B. Cagle, Jr.  
P. O. Box 5188  
Johnson City, Tennessee 37603  
615-926-3121

**RECEPTION SERVICES AVAILABLE AT JONESVILLE, VIRGINIA**

*Stations Providing Service to Substantial Portions  
of the Predicted Service Area of the  
Proposed Channel 256A at Jonesville, Virginia*

WFSR(AM)	Harlan, Kentucky
WHLN(AM)	Harlan, Kentucky
WSWV(AM)	Pennington Gap, Virginia
WMMT(FM)	Whitesburg, Kentucky
WETS(FM)	Johnson City, Tennessee
WEKH(FM)	Hazard, Kentucky
WUOT(FM)	Knoxville, Tennessee
WAXM(FM)	Big Stone Gap, Virginia
WIKQ(FM)	Greeneville, Tennessee
WJXB(FM)	Knoxville, Tennessee
WTFM(FM)	Kingsport, Tennessee
WXBQ(FM)	Bristol, Tennessee
WSGS(FM)	Hazard, Kentucky
WQUT(FM)	Johnson City, Tennessee
WIMZ(FM)	Knoxville, Tennessee
WEYE(FM)	Surgoinsville, Tennessee
WTUK(FM)	Harlan, Kentucky
WSWV(FM)	Pennington Gap, Virginia
WJDT(FM)	Rogersville, Tennessee
WIVK(FM)	Knoxville, Tennessee
WSJK(TV)	Sneedville, Tennessee
W04BL(TV)	Pennington Gap, Virginia
WATE(TV)	Knoxville, Tennessee
WKXT(TV)	Knoxville, Tennessee
WBIR(TV)	Knoxville, Tennessee
WJHL(TV)	Johnson City, Tennessee
WKOP(TV)	Knoxville, Tennessee
WKPT(TV)	Kingsport, Tennessee
WKPI(TV)	Pikeville, Kentucky
WKHA(TV)	Hazard, Kentucky
WEMT(TV)	Greeneville, Tennessee
WTNZ(TV)	Knoxville, Tennessee
WAGV(TV)	Harlan, Kentucky
WSBN(TV)	Norton, Virginia
WYMT(TV)	Hazard, Kentucky
WLFG(TV)	Grundy, Virginia

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**Exhibit 1**

**COUNTERPROPOSAL REPLY COMMENTS**

*Eaton P. Govan, III & Berton B. Cagle, Jr.*  
**MM Docket No: 94-116      RM-8507 & RM-8567**

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CERTIFICATE OF SERVICE

I, Eaton P. Govan, III, do hereby certify that on this 4th day of January, 1995, I have caused to be mailed pre-paid a copy of the foregoing "COUNTERPROPOSAL REPLY COMMENTS OF EATON P. GOVAN, III & BERTON B. CAGLE, JR." to the following:

Holston Valley Broadcasting Corporation  
c/o Dennis J. Kelly  
Cordon and Kelly  
P. O. Box 6648  
Annapolis, MD 21401

  
Eaton P. Govan, III

C E R T I F I C A T I O N

STATE OF TENNESSEE     )  
                                  )  
WASHINGTON COUNTY     )

I, hereby, certify that all the statements contained in the attached COUNTERPROPOSAL REPLY COMMENTS submitted by Eaton P. Govan, III, and Berton B. Cagle, Jr., in response to the FCC Public Notice, Report No. 2048, MM Docket No. 94-116, RM-8507, RM-8567 are true and accurate to the best of my knowledge, information and belief.

Eaton P. Govan III  
Eaton P. Govan, III

Berton B. Cagle Jr.  
Berton B. Cagle, Jr.

Subscribed and sworn before me this 4 day of January, 1995.

John M. Pruitt  
Notary Public

My commission expires 04-29-98